

### **REMARKS/ARGUMENTS**

Reconsideration of this application is requested. This Amendment responds to the issues raised in the Official Action of June 22, 2009, a Final Rejection, and accompanies a Request for Continued Examination.

Claims 1-5, 7, and 10-18 will be pending in the application subsequent to entry of this Amendment.

The claims have been amended in order to more particularly point out and distinctly claim that which applicants regard as their invention and direct them to preferred aspects of the disclosure. More specifically, claim 1 is amended to incorporate the subject matter of claim 6, namely that an alkaline solution is used and one that has a pH value in the range of from 9 to 11. As consequence of this claim 6 has been canceled as have claims 8 and 9 which no longer fall within amended claim 1.

Claim 18 has been amended to specify that the particulate material employed falls within the range of 20-30% by weight and is discussed in more detail below.

Claim 18 has also been amended in light of the examiner's comments on page 2, second paragraph and "intended use". The claim as presently worded does specifically indicate that the cellulose fibers are mixed with the indicated amount of particulate material derived from mammalian hair.

The objection stated at the top of page 6 in item 1 of the Official Action directed to claim 14 is not understood. Claim 14 simply indicates that the particulate material derived from mammalian hair also includes fibers which would be consistent with a paper or paperboard product.

The examiner's comments on pages 3-5 of the Official Action have been carefully studied and applicants respond to them in the remarks that follow.

A single provisional obviousness-type double patenting rejection is made on page 6, item 2 relating to certain claims of co-pending application 11/628,715. As stated earlier during the examination of this application, applicants will hold a full and complete response in abeyance until specific allowability is indicated in either or both of the involved applications, that is this one or Serial No. 11/628,715.

During previous examination applicants showed that both Anders and Müller do not

teach an oxidizing treatment of 5 minutes to 16 hours, and in particular not in relationship to the preparation of paper or paperboard products.

It is observed that Müller teaches the reader to use a weakly acid bleaching solution (Müller, page 1, lines 61-69 and lines 82-87). According to Müller an acid bleaching solution is much better than an alkaline bleaching solution (e.g. Müller, page 1, lines 90-95). Hence, Müller teaches away from the presently claimed subject-matter which requires an alkaline bleaching solution.

Also Anders teaches a much longer treatment than the treatment duration defined in the present claims. This is stated in Anders, page 1, lines 75-80. The Examiner speculates<sup>1</sup> that it is expected that the hair fibers in Anders would be somewhat less white after a treatment of 5 minutes to 16 hours. However, such allegation is based purely on speculation. Moreover, there is no disclosure, let alone an indication in Anders that an oxidation treatment of 5 minutes to 16 hours would be sufficient for obtaining particulate material with properties such that it can be used in the preparation of a paper or paperboard product.

In addition, it is noted that Anders discloses the addition of ammonia to bring the bleaching bath to proper alkalinity. Anders, however, is completely silent as to what pH a proper alkalinity would be. Again, it can only be speculated that such proper alkalinity would be in the presently claimed pH range of between 9 and 11.

The Examiner has now further cited for the first time the disclosure of Dias et al. This publication relates to hair coloring compositions and processes for coloring hair. In particular, Dias et al are concerned with oxidative hair coloring compositions which effectively dye human hair but avoid or reduce damage to the hair. For this specific application, it is required that the treatment is very gentle, since the treatment may not lead to the hair being damaged. Therefore, Dias et al concern an oxidation treatment at low pH (Dias et al, e.g. claims 15 and 18).

An alkaline bleaching treatment at a pH of 9-11 on the other hand is a rough treatment during which hair is damaged. The skilled person would therefore not be motivated to adapt the teaching of Dias et al and use an alkaline bleaching solution.

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<sup>1</sup> Counsel notes the examiner's findings must be based on substantial evidence, i.e. some concrete evidence in the record. See *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001). ("[T]he Board cannot simply reach conclusions based on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")

Further, it is observed that Dias et al discloses a shorter treatment time, but only in respect of an acidic bleaching treatment, and for an application in hair coloration, instead of for the preparation of a paper or paperboard product. There is no disclosure or suggestion by Dias et al that an alkaline bleaching treatment such as disclosed by Anders can result in a desirable intermediate product for the preparation of a paper or paperboard product, when the treatment is only carried out for 5 minutes to 16 hours. In any case, Anders teaches one to bleach the hair for 24 hours.

It follows that a shorter alkaline bleaching treatment than the one taught by Anders is not obvious and is certainly not suggested. Müller and Dias et al point away<sup>2</sup> from the invention by teaching that alkaline treatment is undesirable, whereas Anders does not implicate that a shorter alkaline treatment is possible and provides improved properties when the material is to be used in papermaking.

With respect to independent claim 18, it appears that the Examiner acknowledges that an unexpected technical effect has been evidenced for the case when cellulose fibers are substituted with the particulate material defined in the invention to a level of 20-30 wt.% (Official Action, page 5, second paragraph). Although this range falls within the one disclosed by Akitaro et al it embodies a selection invention, because the inventors found that only this specific sub-range has additional advantages that were not recognized by Akitaro et al.

For the above reasons it is respectfully submitted that all pending claims define patentable subject matter. Reconsideration and allowance are solicited.

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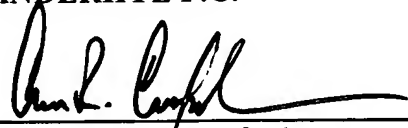
<sup>2</sup> An obviousness rejection must rest on a sound factual basis with these facts being deduced without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption, or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). One cannot employ hindsight by using the applicant's own disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. *See, e.g., Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988).

SLAGHEK ET AL.  
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Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



Arthur R. Crawford  
Reg. No. 25,327

ARC:eaw  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100